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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,254	12/17/2001	Alexander Goen Szynalski	NutriMerica	4735

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[REDACTED] EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
3712	

DATE MAILED: 04/17/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/023,254	SZYNALSKI, ALEXANDER GOEN	<i>CJH</i>
	<b>Examiner</b>	<b>Art Unit</b>	
	Kurt Fernstrom	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_ .

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-45 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1-45 is/are rejected.

7) Claim(s) \_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ .	6) <input type="checkbox"/> Other: _____

Art Unit: 3712

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 8, 16-19, 23, 31-34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hapworth in view of Ferry, ‘Nicotine Dependence: America’s ‘Drug of Choice’’. Hapworth discloses in column 2, line 60 to column 4, line 65 a system and method to help the user stop smoking comprising provision of a stop-smoking substance in combination with educational and behavior modification programs. Column 4, lines 54-65 in particular discusses this combination. Hapworth fails to disclose the use of hypnosis in the behavior modification program. Hypnosis as a means of treating addiction to smoking is well known, however, as disclosed at page 9 (Section VII, E) of Ferry. It would have been obvious to one of ordinary skill in the relevant art to modify the system and method disclosed by Hapworth by providing hypnosis as the behavior therapy for the purpose of training the subconscious mind of the user to learn to stop smoking, particularly given that Ferry also discloses at page 12 (Section X, A) that combinations of pharmaceutical and behavioral therapy are known. With respect to claims 2, 4,

Art Unit: 3712

17, 19, 32 and 34, Ferry discloses at page 10 (Section XIII, B) the use of buproprion hydrochloride as a stop smoking substance. With respect to claims 3, 18 and 33, Ferry discloses at page 11 (Section IX, H) the use of phenteramine to control weight. With respect to claims 8, 23 and 38, Ferry discloses at page 11 (Section IX, G) the use of lobelin, which comprises lobelia, to stop smoking.

3. Claims 5-7, 9, 11, 20-22, 24, 26, 35-37, 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hapworth in view of Ferry, and further in view of Umbdenstock. Hapworth as viewed in combination with Ferry discloses all of the limitations of claims 5-7, 20-22 and 35-37 with the exception of the use of dietary supplements including gotu kola and kava kava. Umbdenstock discloses in column 9, line 3 to column 10, line 20 the use of dietary supplements including gotu kola and kava kava as part of a program to curb an addiction. It would have been obvious to one of ordinary skill in the relevant art to modify the system and method disclosed by Hapworth as viewed in combination with Ferry by providing dietary supplements including gotu kola and kava kava for the purpose of supplying needed nutrients to the user. With respect to claims 9, 11, 24, 26, 39 and 41, kava kava is an anxiolytic.

4. Claims 9, 10, 24, 25, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hapworth in view of Ferry, and further in view of Gawin. Hapworth as viewed in combination with Ferry discloses all of the limitations of claims 9, 10, 24, 25, 39 and 40 with the exception of the use of an anxiolytic drug. Gawin discloses in column 9, line 3 to column 10, line 20 the use of anxiolytic drugs as part of a program to curb an addiction. It would have been

Art Unit: 3712

obvious to one of ordinary skill in the relevant art to modify the system and method disclosed by Hapworth as viewed in combination with Ferry by providing an anxiolytic drug for the purpose of reducing tension and anxiety in the user.

5. Claims 12-15, 27-30 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hapworth in view of Ferry, and further in view of Cary. Hapworth as viewed in combination with Ferry discloses all of the limitations of claims 12-15, 27-30 and 42-45 with the exception of the use of a nicotine receptor antagonist. Cary discloses in column 2, line 57 to column 3, line 62 the use of nicotine receptor antagonist drugs as part of a program to curb an addiction. It would have been obvious to one of ordinary skill in the relevant art to modify the system and method disclosed by Hapworth as viewed in combination with Ferry by providing a nicotine receptor antagonist drug for the purpose of blocking physiologic, behavioral and reinforcing effects of nicotine. With respect to claims 14, 15, 29, 30, 44 and 45, Ferry discloses the use of lobelia, as discussed above. Lobelia is a nicotine receptor antagonist.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reitberg, Cooper (5,055,478), Hudson, Glazer and Cooper (4,255,439) disclose various systems and methods to help a user stop smoking.

Serial Number: 10/023,254

Page 5

Art Unit: 3712

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303.

KF

April 16, 2003

*Kurt Fernstrom*